

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|-------------------------------------|---|-----------------|
| BRIGHT & KUBALE WATER COMPANY, INC. |) | |
| |) | |
| Complainant |) | |
| |) | |
| v. |) | CASE NO. 89-217 |
| |) | |
| HEDGEVILLE WATER ASSOCIATION |) | |
| |) | |
| Defendant |) | |

O R D E R

This matter arising upon separate motions filed October 23, 1990 by the complainant, Bright & Kubale Water Company, Inc. ("Bright & Kubale"), and by the defendant, Hedgeville Water Association ("Hedgeville"), for rehearing of the Commission's Order entered October 2, 1990, and it appearing to this Commission as follows:

This action arises out of a complaint by Bright & Kubale requesting that the Commission compel Hedgeville to extend its water distribution system to incorporate the consumers currently being served by Bright & Kubale. Both Bright & Kubale and Hedgeville are water utilities engaged in furnishing and distributing water to members of the public who reside in Boyle County. By Order entered October 2, 1990, the Commission directed Hedgeville to extend its system by accepting ownership of the Bright & Kubale system. In order to effect the transfer, the Order directed each party to fulfill certain requirements. In

their motions, both parties request clarification of those requirements. In addition, Bright & Kubale requests that the Order be modified to delete certain requirements imposed upon Bright & Kubale and for an informal conference and Hedgeville requests that certain of Bright & Kubale's obligations be modified.

REPAIRS AND IMPROVEMENTS

The Order directs Bright & Kubale to bear the cost of any improvements made to the Bright & Kubale system by Hedgeville for a period of up to one year, not to exceed a total cost of \$15,000. Although Bright & Kubale maintain that its system is physically capable of meeting the needs of its customers, Hedgeville is concerned that connecting the two systems might put a strain upon the Bright & Kubale system causing it to break down and imposing a financial burden upon Hedgeville. This concern was heightened by the fact that the Bright & Kubale system is not in compliance with Commission regulations. The provision directing Bright & Kubale to bear the cost of repairs and improvements to the Bright & Kubale system for a period of one year was intended to allay that fear.

As referred to in the Order, covered repairs would include those required after a physical failure has occurred to the existing system. Bright & Kubale would not be responsible for any repairs that are used to upgrade the system unless such improvement is necessary to provide service in conformity with the standards of service required by this Commission. "Improvements," as referred to in the Order, pertain to the replacement of

defective, worn out, or obsolete parts that are unable to function in the manner for which they were incorporated into the system and which cannot be repaired to a condition upon which they can be relied to provide reasonable service.

As requested by Hedgeville in its petition for reconsideration, the one year period for which Bright & Kubale should be responsible for repairs and improvements to its system should run from the date Hedgeville assumes full operation and control of the system. The Commission's Order of October 2, 1990 should therefore be modified accordingly.

REQUEST TO STRIKE

Bright & Kubale has requested that the Commission strike from the Order the statement on page 3 that the shareholders "have been required to subsidize the difference between revenues and expenses" in the operation of the system. As grounds for the request Bright & Kubale contends there is no support in the record for that statement. That is simply not the case.

During cross-examination by Commission Staff, Edwin Kubale, Jr. was asked whether Bright & Kubale recovered the cost of the distribution system in the sale of lots in the Lakedale Subdivision or by separate fee. Although the question was directed at the cost of construction, in his response, Mr. Kubale also directed his answer more towards operating costs when he stated:

We've never recovered it, period. Whatever needed to be done to that and the entire existence of it, I would call up my two partners and say, 'We are going to have to do \$1,000 worth of work down there,' and they would each give me a proportionate-they would say, 'How much money have we got?' and I'll tell you it got tough. It

got to where they didn't want to see me coming, and they would say, 'How much money have we got in that thing?' 'Well, we don't have any money.' He would give me a check, and he would look about like he does now, and my brother would give me a check, and I would give a check, and we would put it in the bank, and we financed it that way, the entire thing, and we just had no idea that we would still be doing that today. We're financing all of this the same way. Our federal returns have always been a loss, and we are still today-when we get through today, he'll put money in, my brother will put money in, and I will, and we'll pay our bills. It won't be prorated anywhere.¹

Later, in response to a question on how Bright & Kubale determined its monthly rates, Mr. Kubale made the following statement:

I have tried to keep the loss. If it would just operate and not show a loss and we were keeping it at around a \$200 a year loss and Bob was getting water for his cattle, and at that time, my brother left down there, and we could stand two or three hundred bucks, just to have it-you know, that wasn't killing us.²

One clear purpose of Mr. Kubale's testimony was to convey to the Commission that Bright & Kubale was operating the distribution system at a loss of \$200 to \$300 per year and that the loss was being borne by the partners. The Commission's finding in this regard is therefore supported by the testimony of Edwin Kubale, Jr. and the motion by Bright & Kubale to strike that finding should be denied.

METER REPLACEMENT

The Commission's Order of October 2, 1990 directs Bright & Kubale to replace, at its own expense, the water meters in its system with the same kind of water meters used by Hedgeville. The purpose of this directive was to apportion the cost of connecting

¹ Transcript of Evidence, pages 57 and 58.

² Id., page 59.

the two systems between the two water companies. As its share of costs, the Order directs Hedgeville to install the lines necessary to connect the systems. Therefore, it is reasonable to require Bright & Kubale, as its share of the costs, to install the equipment necessary to make its system compatible with the Hedgeville system. This would include not only new meters and appurtenances necessary to their operation, but also any alterations or appurtenances necessary to complete the connection in accordance with the Commission's requirements. This would also include breaking and capping off the Bright & Kubale connection to the 2-inch water line exiting out of Herrington Lake and the installation of blow-off valves on dead-end lines for the purpose of flushing, in accordance with 807 KAR 5:066, Section 9(2). Therefore, to the extent that such requirements were not contained or made clear in the original Order, the Order should be modified to that extent.

REIMBURSEMENT FOR REPAIRS AND IMPROVEMENTS

Bright & Kubale requests that the Commission reconsider its authority to require the corporation to bear the costs of repairs and improvements without reimbursement from the ratepayers. The purpose of this requirement is to address concerns that Hedgeville had in assuming operation of a system which was not constructed in accordance with Commission regulations. One reason why Hedgeville would not accept ownership of the system first offered by Bright & Kubale was because Hedgeville was fearful that repairs and improvements necessary for the maintenance and operation of the system would impose a heavy financial burden upon Hedgeville.

Since such repairs and improvements would relate back to the way the system was constructed and installed or the way it was maintained by Bright & Kubale, the cost of repairs and improvements should be borne by Bright & Kubale and not by current customers. Therefore, the requirement that Bright & Kubale bear the cost of repairs and improvements is consistent with Commission policy and the request to reconsider that obligation should be denied.

THE PERFORMANCE BOND

Bright & Kubale has requested that the terms and conditions of the performance bond required by the Order of October 2, 1990 be clarified. The purpose of the performance bond is to ensure that the repairs or improvements required during the first year of operation by Hedgeville are paid for by Bright & Kubale. The payments are not made from the bond but, instead, the bond merely guarantees that payment is made. It would be incumbent upon Hedgeville to seek forfeiture of the bond in the event Bright & Kubale refused or was unable to comply with provisions of this Order. Therefore, the request to reconsider that Bright & Kubale obtain a performance bond should be denied.

Hedgeville has requested clarification of the mechanism to be employed for resolution of disputes concerning payments required by Order. Any such disputes that the parties are unable to resolve can be resolved by the Commission upon either party filing a complaint.

COMPLIANCE WITH ORDER

In its motion to reconsider, Bright & Kubale maintains that as a corporate entity it cannot pay for the replacement of the meters or tender security to ensure payment for repairs or improvements unless its principal stockholders individually place sufficient funds into the corporation. Because they have incurred unreimbursed expenses in the past, these individuals are reluctant to incur further unreimbursed expenses and request relief from this obligation.

As noted above, this action arises out of a complaint by Bright & Kubale to compel Hedgeville to assume operation of its facility. In making this request, Bright & Kubale was motivated not only by the increasing difficulty the principal shareholders are having in operating the system but also the expense they will have to incur to bring the system into compliance with Commission regulations if they continue its operation. As stated earlier, the Order is an attempt to relieve Bright & Kubale of its obligations as a public utility and at the same time not impose a heavy obligation upon Hedgeville which is directly related to Bright & Kubale's failure to fully meet their obligations in the past. It should be noted that the obligations inherent in operating a public utility were not thrust upon Bright & Kubale, but were undertaken voluntarily to aid in development of property owned by the principal shareholders into a subdivision. The Order is therefore clearly in the interest of both the corporation and its shareholders.

RESALE OF WATER

In its motion for rehearing, Hedgeville states that "a new subdivision has been set up since this case was heard and the owner is selling water through his meter." If, in fact, a customer of Bright & Kubale has constructed facilities and is operating as a water utility without approval of this Commission, then that operation is in violation of KRS 278.020. In such a case, Hedgeville may file a complaint with this Commission concerning this operation. In any event, Hedgeville is precluded by KRS 278.160 from providing services that are inconsistent with its filed tariffs.

EASEMENTS

The Order of October 2, 1990 requires Bright & Kubale to convey all of its assets by proper instrument to Hedgeville upon transfer of the system. The Order assumes that Bright & Kubale will be able to include as part of the transfer all rights-of-way and easements necessary to provide service. To the extent that it is unable to do so, then Hedgeville should not be required to assume the operation of those portions of the Bright & Kubale until such time as Bright & Kubale acquire all necessary easements, right-of-ways by purchase, condemnation or otherwise.

CERTIFICATION OF FREEDOM FROM DEBT

In its motion for rehearing, Hedgeville requests that the Order be modified to require that Bright & Kubale certify that their system is free of debt upon transfer to Hedgeville. While the Order does not expressly state that the property should be transferred free of debt, that requirement is inherent in its

terms. Therefore, the Order of October 2, 1990 should be modified to state that the property be transferred free and clear of all debt. Bright & Kubale should further be required to so certify upon making the transfer.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The Order of October 2, 1990 be and is hereby modified and clarified as follows:

(a) The one year period for which Bright & Kubale shall be responsible for repairs and improvements to its system shall run from the date Hedgeville assumes full operation and control of the system.

(b) Bright & Kubale shall be required to make the installations and alterations and to perform the operations necessary to make its system compatible with the Hedgeville system, including the installations, alterations and operations described herein.


(c) Upon the transfer of its assets to Hedgeville, Bright & Kubale shall certify in writing that it is the sole owner of all interests in the property and that the property is free and clear of all debt.


2. Except to the extent that the Order of October 2, 1990 is modified and clarified herein, the motions by Bright & Kubale and by Hedgeville for rehearing of the Order be and they are hereby denied.

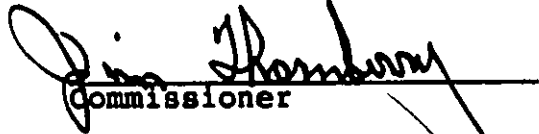
3. The request by Bright & Kubale for an informal conference be and is hereby denied.

Done at Frankfort, Kentucky, this 12th day of November, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director